

FILED

AUG 21 2019

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANCIS EDWARD BURKE, JR.,

Defendant.

CR 19-22-M-DWM

ORDER

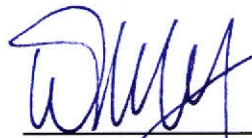
Defendant Francis Edward Burke, Jr. moves for an order directing the Polson Police Department to release \$10,109.00 in cash seized from him during his arrest on October 31, 2018. (Doc. 25.) According to Burke, the money was from his father's life insurance policy. He has submitted documentary evidence that \$45,218.18 in life insurance proceeds were deposited into his bank account on October 30, 2018, and that he withdrew \$15,000 in cash on the same day. (Doc. 25-1 at 6.) He has also confirmed the Polson Police Department still has the \$10,109.00 in its custody. (*Id.* at 4.)

However, Burke has not identified, nor is the Court aware of, any authority for the order he seeks. The seized cash is not involved in this case. Indeed, the federal government has declined to take a position on Burke's motion for that reason. (Doc. 25 at 2.) Nor is the cash in the custody or control of the federal

government. *See* Fed. R. Crim. P. 41(g); L.R. 41.1 (governing return of property “in federal custody or control”). If Burke believes state officials have violated his rights, his recourse is to file a lawsuit against them. He cannot obtain relief in an unrelated federal prosecution. *See United States v. Copeman*, 458 F.3d 1070, 1072 (10th Cir. 2006). Accordingly,

IT IS ORDERED that Burke’s Motion for Order to Release Defendant’s Seized Funds (Doc. 25) is DENIED.

DATED this 21st day of August, 2019.



Donald W. Molloy, District Judge
United States District Court